

HUMANE SOCIETY OF SOUTHERN NEVADA

IBLA 90-517

Decided May 13, 1991

Appeal from a June 7, 1990, decision of the Las Vegas District Manager, Bureau of Land Management, rejecting application to renew Recreation and Public Purpose Lease N-36627.

Petition for reconsideration denied.

1. Appeals: Jurisdiction--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Timely Filing

Refusal to accept personal delivery of a BLM decision does not vitiate service of the decision. A notice of appeal transmitted more than 30 days after personal service of the decision being appealed is untimely and the appeal must be dismissed.

APPEARANCES: George J. Mannina, Jr., Esq., Washington, D.C., for appellant; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

By order dated January 2, 1991, we dismissed the appeal of the Humane Society of Southern Nevada (Society) as untimely because Society's president had actual notice of the June 7, 1990, Bureau of Land Management (BLM) decision rejecting Society's application to renew its Recreation and Public Purposes Act lease more than 30 days before transmitting its notice of appeal and BLM's later service of the decision on counsel for Society did not extend the time for filing a notice of appeal. <sup>1/</sup> See 43 CFR 4.411, 4.401(a); Minchumina Homeowners Association, 93 IBLA 169, 173 (1986); John H. Blackwood, 89 IBLA 379, 381-82 (1985). Society has filed a timely petition for reconsideration.

In an affidavit in support of its petition, Society's president denies that the BLM decision was read to him verbatim over the telephone on June 7 or that he read the decision when it was brought to him in his office by a

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<sup>1/</sup> Society's notice of appeal was transmitted on Aug. 15 and filed on Aug. 20.

BLM employee on July 12. Society also argues that we are estopped from dis-missing its appeal by BLM's July 19 letter that accompanied the copy of the decision mailed to its counsel, which stated that it had a right to appeal the decision within 30 days of receipt of that letter.

The affidavits submitted by BLM in its response to Society's petition contradict the denials of Society's president. Were actual notice of the contents of BLM's decision the only basis for dismissing Society's appeal as untimely, it would be necessary to resolve these factual issues. It is not the only basis, however, so we need not refer these issues for a hear-ing in accordance with 43 CFR 4.415, as suggested by BLM in its response to Society's petition.

The 30-day period for transmitting a notice of appeal under 43 CFR 4.411 begins to run when the decision is served in accordance with 43 CFR 4.401(c). Craig C. Downer, 111 IBLA 332, 334 (1989); Mobil Oil Exploration & Producing Southeast, Inc., 90 IBLA 173, 174 (1986). 43 CFR 4.401(c)(1) authorizes service "by delivering [a] copy personally" or by "sending the document by registered or certified mail, return receipt requested, to [a person's] address of record in the Bureau."

Service by registered or certified mail may be proved by a Postal Service return receipt showing that the document was delivered at the per-son's address of record or showing that the document could not be delivered at the record address because the person had moved without leaving a for-warding address or because delivery was refused at that address. 43 CFR 4.401(c)(2). Service is considered complete when the Postal Service returns an undelivered registered or certified letter to BLM. 43 CFR 4.401(c)(3); Reg Whitson, 55 IBLA 5, 6 (1981). A document mailed by BLM to a person's last address of record, in accordance with 43 CFR 1810.2(b), that is refused is deemed to have been constructively served on the date of refusal. Red Rock Golf & Recreational Association, Inc., 77 IBLA 87, 89 (1983).

Personal service may be proved by a written statement of the person who made such service. 43 CFR 4.401(c)(2). A document will be considered to have been served at the time of personal service. 43 CFR 4.401(c)(3).

[1] In this case there is no evidence that the certified mail con- taining the June 7, 1990, BLM decision was either received at Society's last address of record or returned to BLM, so there was no constructive service of the document. However, there is no dispute that the June 7, 1990, BLM decision was hand-carried by a BLM employee to the office of Society's president on July 12, 1990, who refused to accept it. See Affi- davit of Dart Anthony dated Feb. 25, 1991, at 2; affidavit of Michael T. Moran dated Mar. 22, 1991, at 3. The July 19, 1990, memorandum by Michael T. Moran entitled "Attempted Personal Service" proves personal service in accordance with 43 CFR 4.401(c)(2), and that personal service was effective on July 12 in accordance with 43 CFR 4.401(c)(3). The fact that the president of Society refused to accept the decision does not vitiate the personal service. 43 CFR 1810.2(b); see Red Rock Golf &

Recreational Association, Inc., *supra*; United States v. Bolton, 781 F.2d 528, 533 (6th Cir. 1985). 2/

Because Society's notice of appeal was not transmitted within 30 days of the personal service of the BLM decision on July 12, 1990, we have no jurisdiction over its appeal and the appeal must be dismissed. Ahtna, Inc., 100 IBLA 7, 15 (1987). BLM's July 19, 1990, letter transmitting the decision to Society's counsel cannot waive this appeal period, *see* Nicki Nickoli, 43 IBLA 296 (1979), so there can be no estoppel of our dismissing the appeal. 43 CFR 1810.3(c); Martin Faley, 116 IBLA 398, 402 (1990); John & Maureen Watson, 113 IBLA 235, 238 (1990).

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied. See 43 CFR 4.403.

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Will A. Irwin  
Administrative Judge

I concur:

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James L. Byrnes  
Administrative Judge

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2/ The July 12, 1990, letter from Society's president requesting all matters concerning its lease be sent to its counsel was filed with BLM on July 16; until July 16, therefore, its last address of record was where BLM attempted to serve the decision personally on July 12. TGC May 1983, 94 IBLA 22, 23 (1986); Victor M. Onet, Jr., 81 IBLA 144 (1984).

